

**Comments of the
RUBBER MANUFACTURERS ASSOCIATION**

On

**Notice of Proposed Rulemaking:
Motor Vehicle Safety; Disposition of Recalled Tires**

**National Highway Traffic Safety Administration
U.S. Department of Transportation**

**Docket No. NHTSA 2001-10856
February 19, 2002**

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I. INTRODUCTION.

The Rubber Manufacturers Association ("RMA") is the primary trade association representing the interests of the tire and rubber industry in the United States. RMA's membership includes all of the country's major tire manufacturers: Bridgestone/Firestone, Inc., Continental Tire N.A., Cooper Tire & Rubber Company, Goodyear Tire & Rubber Company, Michelin North America, Inc., Pirelli Tire North America, and Yokohama Tire Corporation.

On behalf of its tire manufacturer members, RMA responds to the National Highway Traffic Safety Administration's ("NHTSA" or "Agency") Notice of Proposed Rulemaking on Motor Vehicle Safety; Disposition of Recalled Tires published in the Federal Register on December 18, 2001.

II. NHTSA'S PROPOSAL IS OVERLY BROAD AND BURDENSOME

A. Flexibility is Necessary in Creating Tire Recall Plans

RMA believes NHTSA's proposal is overly broad and would prove to be burdensome to both the industry and NHTSA. As the Inspector General of the Department of Transportation has recognized, the majority of tire recalls are completed successfully, and there is very little evidence regarding why some consumers do not bring

in their vehicle or tire for repair or replacement. In the case of tires, this may be because a recalled tire is no longer in service. However, NHTSA's proposed regulation regarding the disposition of recalled tires, with stringent notice and paperwork requirements, would indicate that there is a wholesale failure in the tire recall process. RMA does not believe this is true and encourages NHTSA to develop a rule that provides tire manufacturers with the needed flexibility.

The vast majority of tire recalls in this country are narrowly focused and impact a small quantity of tires. NHTSA uses the example of the Firestone recall in the year 2000 as the rationale and model for the proposal. However, this was not the "normal" recall and the history of tire recalls clearly demonstrates that fact. RMA estimates that there have been about 295 tire recalls in this country. Only four of these recalls have involved more than 1 million tires and only 51 recalls have involved over 10,000 tires. Furthermore, RMA estimates that 142 recalls have involved less than 1,000 tires. For most tire recalls, the current regulatory requirements contained in 49 CFR Part 573 would be appropriate and any additional regulatory requirements are unnecessary. This is particularly true for recalls of less than 10,000 tires.

RMA suggests that NHTSA revise the proposal and allow tire manufacturers to work with the Agency to provide a tire recall plan specific to the situation at hand. If necessary, this plan would address the specific elements outlined in the NHTSA proposal. However, all tire recall plans should be tailored to the needs of the recall.

In general, for tire recalls exceeding 10,000 tires, RMA supports the basic three elements indicated by NHTSA to be addressed in a recall plan:

- (1) Address how the manufacturer will assure that the entities replacing the tires are aware of the legal requirements related to recalls of tires.
- (2) Address how the manufacturer will prevent, to the extent reasonably within its control, the recalled tires from being resold for installation on a motor vehicle.
- (3) Address how the manufacturer will limit, to the extent reasonably within its control, the disposal of the recalled tires in landfills.

In these cases, RMA believes the objectives of the TREAD Act can be achieved by requiring the manufacturer to present a plan to NHTSA that addresses these issues. However, it is important to recognize that in small recall situations, (recalls under 10,000 tires) even these general requirements may be dealt with in very short order. The specific, minute detail outlined in NHTSA's NPRM is unnecessary in all cases and would prove to be a paperwork nightmare for the industry and the Agency. It also would not achieve any additional recall-related goals.

B. Impact on Scrap Tire Management

This proposal impacts both the recall plan and the disposal of the recalled tires. RMA has been a leading force in advocating for sound scrap tire policy. The U.S. tire manufacturers have been working to support and promote the environmentally and economically sound management and use of scrap tires since before 1990, when the industry established the Scrap Tire Management Council (STMC) as part of the RMA. Now, RMA continues to pursue its scrap tire mission directly. RMA provides technical and policy information regarding several areas of scrap tire management, hosts national and regional scrap tire conferences for state and federal regulators, and advocates for sound state programs to address scrap tire issues. RMA supports all uses of scrap tires that are safe, environmentally sound and cost efficient.

When RMA first committed to its scrap tire mission in 1990 only 10% of annual generation was beneficially reused. As of 2001 approximately 78% of all annually generated scrap tires are beneficially reused, with the remainder primarily legally land-disposed. This is particularly remarkable considering the 800,000 tires that are replaced daily in this country. Very few other industries have achieved such high rates of beneficial end-of-life product re-use.

We are concerned that the Agency did not carefully examine the statutory language in light of the reality of scrap tire disposal in this country.¹ Although RMA is well aware of the statutory language regarding landfills, it is imperative to remember that the TREAD Act did not prohibit the landfilling of scrap tires. RMA is not aware that tire recalls have resulted in an increase in scrap tires in landfills or stockpiles.

Historically, the management of scrap tires has been a state issue. RMA believes this is appropriate. States are best equipped to fashion scrap tire programs tailored to state needs and market capacity for scrap tires. RMA will continue to work with states to create and manage sound scrap tire programs. The Agency should require the manufacturers to comply with state laws only. No more and no less should be expected or is needed.

The language in the proposed rule regarding the landfilling of tires presents an example of where the proposal sets requirements beyond the scope of state scrap tire laws and regulations. The proposal states a clear preference against landfilling of tires. See 66 Fed.Reg. at 243, Section 573.5 (c) (9) (C) (1). However, contrary to the language in the proposal, many states allow the landfilling of whole or shredded scrap tires, recognizing that landfilling can be a viable disposal option in regions where other scrap tire markets are insufficient to meet demand. In addition, NHTSA should acknowledge that scrap tires are used as construction materials in landfill operations as lining, engineered fill, and as daily cover. This use is not only economically and environmentally viable, but satisfies a need in areas where other suitable materials are scarce. Furthermore, scrap tires are used in other land applications such as foundation insulation, bulking material

¹ Attachment A contains additional information from the California Waste Management Board on the uses of scrap tires in landfill applications.

for compost, and soil amendments. RMA is not aware of any environmental degradation caused by the use of tire material in land application. RMA recommends that NHTSA revise the regulation to reflect the important roles played by landfilling, and the use of tires in landfill construction materials and other land applications in the scrap tire management system.

III. ISSUES OF SPECIFIC CONCERN

A. Notification of Stores, Dealers, Distributors (§573.5 (c) (9) (A))

NHTSA's proposal would require the manufacturer to notify all of the manufacturer's owned stores, franchised dealers, and/or distributors, as well as all independent outlets that are authorized to replace the tires about the specific prohibitions and notification requirements, including notice of the ban on the sale of new defective or noncompliant tires, the prohibition on the sale of new and used defective and noncompliant tires, and the duty to notify NHTSA of any sale of a new or used recalled tire for use on a motor vehicle. The proposal would also require the manufacturer to provide manufacturer-owned locations with directions on how to comply with the specific statutory provisions.

RMA believes that this provision is overly broad. The tire manufacturer should notify stores and outlets likely to see a recalled tire. Most tire recalls are of limited quantity. A notification provision that would require the manufacturer to notify all of its customers would create a tremendous paperwork burden without providing any real improvement for notification and compliance. Not all recalled tires will be on a vehicle. Some are likely to still be in customer inventories. If a manufacturer has a tire brand only marketed through a limited number of stores and outlets, the obligation to notify should only extend to these specific locations. This is particularly true for specialty tires, truck tires, and tires directed to a specific account. The likelihood of the wide spectrum of tire outlets replacing these tires is slim. When other entities, like automobile manufacturers, get involved in the replacement of tires, this would only further complicate the process. All of these factors need to be taken into consideration when establishing a recall plan. A one-size-fits-all scheme will not work.

B. Destruction of Tires Within One Business Day (§ 573.5 (c) (B) (1))

The Agency has proposed a requirement for manufacturer-owned and manufacturer-controlled outlets to alter the recalled tires by the close of business on the day on which the recalled tire has been removed from the vehicle. RMA is opposed to this provision. In almost all situations, tire manufacturers require recalled tires to be returned to the manufacturers, to verify dealers' claims for reimbursement, for inspection and testing of the recalled tires, and to ensure that they are incapacitated. Return of the tires to the manufacturer assures control over the situation. The recall is the manufacturer's legal responsibility and the manufacturer needs to be able to assure compliance.

NHTSA states in the preamble of the rule that: “Most tires that are recalled are unrepairable, and therefore most are replaced rather than repaired.” This may not be the case. In most tire recall situations, the manufacturer typically recalls a specific set or lot of tires in order to capture a subset of specific tires of concern. All of the recalled tires removed from vehicles are typically replaced. However, the tires removed and those shipped back from customer inventory, that are not of concern could be resold after sorting and verification. Routine and automatic destruction of the tires would increase the cost of the recall and hinder accountability.

As RMA has argued above, the tire manufacturer should submit a plan that lays out the manner in which tires subject to the recall will be incapacitated. This may include requiring individual retail operations to disable the tire or requiring the retail operation to return the tires to the manufacturer’s regional facility.

RMA believes that requiring each manufacturer to provide such a plan would minimize the re-appearance of recalled tires into the market. This should be the ultimate goal of this rulemaking. Individual retailers may not have sufficient staff or expertise to follow the guidelines provided by the manufacturer. The manufacturer may have all the tires sent to one facility for inspection, sorting, testing, and ultimate destruction or the manufacturer may elect to have the tires sent to a variety of facilities. Finally, with any program, the fewer parties held accountable, the easier it would be for NHTSA to track the progress of the recall. NHTSA must recognize that individual business relationships will dictate how the manufacturer will want to structure its dealings with retail establishments. These relationships will also dictate how much control the manufacturer has over these outlets. Individual plans would take that into account and allow for a more streamlined and efficient approach.

C. Monthly Reports (§ 573.5 (c) (9) (B) (3) and § 573.5 (c) (9) (C) (3))

This section would require manufacturer-owned and controlled outlets to submit monthly reports to the manufacturer regarding failures to incapacitate tires within the specified timeframe, any violation of state scrap tire disposal laws, and any other non-compliance with the plan. RMA seriously doubts the constitutionality or the effectiveness of this proposal. If individual outlets have failed to comply with statutory requirements and a plan from the manufacturer, it is unlikely these failures would be reduced to a written document that might lead to prosecution. Any necessary reporting can be accomplished within the quarterly reports already required under existing recall regulations. RMA believes that it would be much more efficient to require the manufacturer to submit a recall plan with a specific strategy for managing recalled tires removed from inventory or from vehicles. Again, this is the most direct and efficient manner for NHTSA to track tire recalls.

D. Notification of Laws and Regulations (§ 573.5 (c) (9) (C) (1))

The Agency is proposing a requirement for the manufacturer to provide manufacturer-owned and controlled outlets with directions for complying with applicable laws and regulations regarding disposal of tires in their jurisdictions. The preamble suggests that NHTSA is considering expanding this provision to require the manufacturer to supply outlets with the names of reputable tire collection and transportation contractors as well as facilities that would accept recalled tires.

This provision does not consider one of the basics of the structure of scrap tire laws and regulations: the disposal of scrap tires is a state and local issue. Local facilities have the best access to the most current information regarding contractors and collection facilities. As NHTSA recognized, RMA has had a pivotal role in the development and implementation of scrap tire laws throughout the country. However, this has only been possible through close cooperation with local and state officials and contacts.

Scrap tire markets are volatile and any efforts by individual tire manufacturers to constantly update a list of collection, transportation, and disposal contractors would prove an almost impossible, never-ending task. If the tire manufacturer is required to clearly identify in its plan how it intends to comply with state laws regarding tire disposal, NHTSA would know that every effort would be made to fulfill these obligations in the best possible method. This would allow the manufacturer to construct specific disposal strategies for specific situations.

In order to help assure appropriate disposition of tires not controlled by the manufacturer, the preamble suggests that manufacturers may be able to include conditions governing tire disposition in their contracts for supply of replacement tires to outlets. Not all manufacturers use contracts. Many manufacturers supply tires to retailers in a buy/sell arrangement. Consequently, this would be an inconsistent and inappropriate method to communicate about tire disposition. Furthermore, it may only confuse the issue since outlets that market more than one brand of tire may receive conflicting directions as to how to dispose of recalled tires.

E. Notification to Other Outlets (§573.5 (c) (9) (C) (2))

NHTSA proposes to require the manufacturer to notify non-manufacturer controlled establishments regarding their duty to comply with applicable state and local laws and regulations regarding the disposal of tires. RMA strongly believes that this provision goes beyond the letter and spirit of the TREAD Act. Retail establishments selling tires are subject to a wide range of laws. Creating a burden for a supplier to instruct a retail establishment on statutory requirements flies in the face of basic business relationships.

An independent retail establishment is just that – independent. The tire manufacturer has an obligation to notify the establishment if a tire that is sold there is being recalled. However, these establishments remove and dispose of tires every day, and are likely to already have a system in place to manage scrap tires. The tire manufacturer should set out the specific plan to manage the recalled tires. Dependent on the plan, the tire may not stay in the retail establishment's control. However, the supplier of the product should not have to shoulder the additional responsibility of constantly updating independent business establishments about state scrap tire disposal laws.

F. Quarterly Report (49 CFR § 573.6 (b) (7))

NHTSA is proposing to require a quarterly report without describing the scope of the proposal. A recall plan already requires a quarterly report and RMA does not believe the proposed exception report is necessary or helpful. RMA would like to reiterate that the monthly report is unnecessary. RMA again urges NHTSA to re-consider the proposed approach and allow each manufacturer to propose a specific plan as outlined above with regular reporting to NHTSA on the progress of the recall.

IV. CONCLUSION

RMA encourages the Agency to re-think the necessity for the additional paperwork burdens proposed in this regulation. RMA believes that this proposal does not take into account the structures currently in place to deal with tire recalls. Given the average size of tire recalls, this detailed regulation is burdensome and unnecessary. RMA urges NHTSA to enable tire manufacturers to submit a plan tailored to any individual recall instance, to satisfy identified needs under the law. Finally, RMA would welcome an opportunity to meet with the Agency to address these issues.